IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 167 of 2007
Date of decision 7.5.2007

The Commissioner of Income Tax III, Ludhiana . Appellant

Versus

M/s Shivam Construction Co. .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr.SK Garg Narwana, Advocate for the Appellant

M.M.Kumar, J.

The revenue has approached this Court by invoking the provisions of Section 260A of the Income Tax Act, 1961 and has challenged the order 30.8.2006 passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh in ITA Nos. 622-728/ Chandi/ 2005 in respect of the assessment year 2001-02. It has been claimed that the following substantial questions of law would arise for our determination:

" i) Is the Hon'ble ITAT legally justified in holding that in the case of contractors, profit can be worked on estimate basis at 10% of the gross receipts, when the assessee claims to be maintaining proper books of account which have been duly audited by a CA, but does not produce complete books for verification before the AO; and

ii) The Income Tax Act clearly provides for applicability of deeming provisions of section 44 AD in case of contractor with a total turnover not exceeding Rs.40 lakhs can the Hon'ble ITAT travel beyond the provisions of IT Act and make the provisions applicable even to those cases which are not covered

in the statutory limit of Rs.40 lakhs, as specifically provided for in the Act."

It is undisputed that the assessee did not maintain the books of account as per the provisions of the Act. It has filed the return on the basis of estimated proof subject to further deductions on account of deprecation, interest and salary to partners. The Assessing Officer has pointed out about the lack of evidence to support the claim of the assessee for deduction of expenses in the return of income. There was thus no alternative for the Assessing Officer but to estimate the income. The Tribunal has found that there was no justification for the Assessing Officer to disallow the entire expenses. When the assessment is made to the best of the judgement of the Assessing Officer, it is required to be based on some material. The material available on record is the payments received by the assessee in respect of the contracts which were authenticated. Therefore, the same could constitute a valid basis for estimation of income. Then the question is about the rate of profit. The dispute arose as to whether the net rate of profit should be 12 percent or it should be 10 percent. The Tribunal has also taken into consideration the assessment for the year 1998-99 passed by the Assessing Officer in the assessee's own case where the net rate of profit is 10 percent subject to further deductions on account of salary and interest paid to partners has been applied. The afore-mentioned order had attained finality as no further proceedings were initiated either by the assessee nor by the revenue. The same was the position with regard to assessment year 2003-04. Accordingly, the net rate of profit of 10 percent on receipts of the assessee has been held to be reasonable in the instant case as against the net rate of profit of 12 percent claimed by the revenue as no special

circumstances have been high lighted by the revenue for application of higher rate of profit for the assessment year in question. The assessee has also been held entitled to deductions on account of salary and interest to the partners subject to the limits provided by clause (b) of Section 40 of the Act. The claim of the assessee for deduction on account of depreciation has been declined.

After hearing the learned counsel for the revenue we are of the considered view that the discretion exercised by the Tribunal is based on relevant considerations and does not suffer from any legal infirmity warranting interference of this Court. No substantial question of law would arise for our determination. The appeal is wholly mis-conceived and the same is accordingly dismissed.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

7.5.2007
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